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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,597	07/28/2003	Alton W. Hezeltine	884.413US2	4627
21186	7590	10/20/2004	EXAMINER	
SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A. P.O. BOX 2938 MINNEAPOLIS, MN 55402				CHUKWURAH, NATHANIEL C

ART UNIT	PAPER NUMBER
3721	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/628,597	HEZELTINE, ALTON W.
	Examiner	Art Unit
	Nathaniel C. Chukwurah	3721

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 28 July 2003.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-5,11-16,21-25 and 30 is/are rejected.
 7) Claim(s) 6-10,17-20 and 26-29 is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date 9/27/2004.

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application (PTO-152)
 6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 12-16, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka (US 5,437,339) in view of Maier et al. (US 4,213,301).

Tanaka discloses a tool comprising: a body (1) having chamber, a piston (2) within the chamber, a nose (4) having a channel, a pin (3) within the channel, a propulsion element (27) to propel the piston, an actuation element (31) to actuate the propulsion element. The channel is dimensioned to retain a fastener until the propulsion element is actuated as evidenced in Figure 2. The piston (2) has more mass than the pin as shown in Figure 1. Tanaka further discloses at least one resilient bumper (5), a depressible actuation element (31), a primary hammer (7), a secondary hammer (2) having a pin (3) and the primary hammer has more mass than the secondary hammer as shown in Figure 1.

Tanaka lacks a pin physically independent of the piston. However, Maier et al. discloses similar tool including a pin (5) within a channel and physically independent of the piston (13).

In view of the teachings of Maier et al., it would have been obvious to one skilled in the art to provide the tool of Tanaka with a pin physically independent of the piston in order to move more effectively within the channel to strike workpiece. Although Tanaka does not disclose a tip adapter, tip adapter is well known in fastener driving tool to accommodate nails of different

dimension and would have been obvious to one skilled in the art to provide the tool of Tanaka with a tip adapter to more effectively accommodate nails of different dimension.

Claims 11, 22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka in view of Maier et al. as applied to claims 1, 12 and 23 and further in view of Lindsay (US 6,095,256).

Modified Tanaka lacks a supply hose connection and a pilot hose connection to couple to a supply hose and a pilot hose, respectively.

However, Lindsay teaches a supply hose connection (116) and a pilot hose connection (114) to couple to a supply hose and a pilot hose, providing vacuum and air pressure in the supply hose and pilot hose, respectively, in order not to depend on a spring for the piston's return or impact stroke (col. 2, lines 58-60).

Allowable Subject Matter

Claims 6-10, 17-20 and 26-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (703) 308-6385. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (703) 308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Nc



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700